

# Public Service Commission of the District of Columbia

717 14TH STREET, N.W.  
WASHINGTON, D.C. 20005  
(202) 626-5100



IN REPLY REFER TO

September 14, 1998

**RECEIVED**

SEP 14 1998

VIA HAND DELIVERY

Ms. Magalie Roman Salas  
Commission Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RE: Comments in CC Docket No. 98-146

Dear Ms. Salas:

The Public Service Commission of the District of Columbia, by counsel, hereby submits for filing in the referenced docket the original and four copies of its Comments in response to the Notice of Inquiry issued on August 7, 1998.

Also enclosed is an additional copy that I would appreciate your date-stamping and returning to me with the messenger. If you have any questions, please contact me at 202-626-5140. Thank you for your assistance.

Sincerely,

*Richard A. Beverly*  
Richard A. Beverly  
General Counsel

Enclosures

024  
RECEIVED

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

SEP 14 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of Inquiry )  
Concerning the Deployment of )  
Advanced Telecommunications )  
Capability to All Americans in )  
A Reasonable and Timely Fashion, )  
and Possible Steps to Accelerate )  
Such Deployment Pursuant to )  
Section 706 of the )  
Telecommunications Act of 1996 )

CC Docket 98-146

COMMENTS OF THE  
DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION

Of Counsel:

Thomas R. Gibbon  
Anthony M. Black  
Frankie Foster-Davis  
BELL, BOYD & LLOYD  
1615 L Street, N.W.  
Suite 1200  
Washington, D.C. 20036  
(202) 466-6300

PUBLIC SERVICE COMMISSION OF  
THE DISTRICT OF COLUMBIA

Richard A. Beverly  
General Counsel  
717 Fourteenth Street, N.W.  
Washington, D.C. 20005  
(202) 626-5100

September 14, 1998

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

|                                  |   |                  |
|----------------------------------|---|------------------|
| In the Matter of Inquiry         | ) |                  |
| Concerning the Deployment of     | ) |                  |
| Advanced Telecommunications      | ) |                  |
| Capability to All Americans in   | ) |                  |
| A Reasonable and Timely Fashion, | ) | CC Docket 98-146 |
| and Possible Steps to Accelerate | ) |                  |
| Such Deployment Pursuant to      | ) |                  |
| Section 706 of the               | ) |                  |
| Telecommunications Act of 1996   | ) |                  |
|                                  | ) |                  |

COMMENTS OF THE  
DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION

I. INTRODUCTION

The District of Columbia Public Service Commission ("DCPSC") submits these comments in response to the Notice of Inquiry ("NOI") issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned docket on August 7, 1998. In the NOI, the FCC solicits comments on the implementation of section 706 of the Telecommunications Act of 1996 ("the Act").<sup>1</sup> Section 706(a) of the Act directs the FCC and State commissions<sup>2</sup> to encourage the deployment, on a reasonable and timely basis, of "advanced telecommunications capability"<sup>3</sup> to all Americans. To

---

<sup>1</sup> Pub. L. No. 104-104, Title VII, § 706, 110 Stat. 153, reproduced in the notes under 47 U.S.C.A. § 157 (Supp. 1998).

<sup>2</sup> The DCPSC is a State commission within the meaning of the Act. 47 U.S.C. § 3(40).

<sup>3</sup> Section 706(c) of the Act defines "advanced telecommunications capability" as follows:

(continued...)

achieve this goal, section 706(a) of the Act directs the FCC and State commissions to use, in a manner consistent with the public interest, convenience and necessity, "price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment."

Section 706(b) specifically directs the FCC to initiate the instant inquiry to determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If, after completing this inquiry, the FCC's determination is negative, then section 706(b) requires the FCC to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market." The inquiry and requirement for action to accelerate deployment under section 706(b) are set forth independently from section 706(a); thus, the requirement to "encourage" reasonable and timely deployment under section 706(a) applies regardless of whether the inquiry under section 706(b) results in a determination that requires "accelerated" deployment.

The DCPSC is unique among State commissions in that its jurisdiction covers a geographic area that consists entirely of

---

<sup>3</sup>(...continued)

The term "advanced telecommunications capability" is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

urban and inner city areas. From this unique perspective, the DCPSC will address the following issues in response to the NOI:

1) the need for deployment of advanced capability to all Americans regardless of geographic location, 2) the need for federally-established incentives for deployment of advanced telecommunications capability and for training and public awareness initiatives, and 3) the Alliance for Public Technology's ("APT's") proposal for restructuring of local residential and business rates.

## II. ANALYSIS

### A. The FCC Should Focus on Deployment of Advanced Telecommunications Capability to All Americans Without Special Consideration of "Rural Areas" or Other Geographic Distinctions that May Exclude Populations that Lack Access to Advanced Telecommunications Capability.

The NOI indicates that the FCC has placed an inappropriate emphasis on the advanced service needs of "rural areas." The NOI specifically states that deployment to rural areas is a "particular concern" to the FCC.<sup>4</sup> Rural areas are referenced in 15 paragraphs of the NOI, one of which bears the title "Rural Areas" and addresses solely the needs of those areas.<sup>5</sup> By contrast, only five paragraphs of the NOI even mention, and none focuses on, the advanced service needs of inner cities.<sup>6</sup> The DCPSC objects to this undue emphasis on the needs of rural areas.

---

<sup>4</sup> NOI ¶ 26.

<sup>5</sup> NOI ¶¶ 3, 8, 12, 21, 26, 33, 43, 46, 56, 62, 65, 71, 72, 83, 85.

<sup>6</sup> NOI ¶¶ 8, 21, 68, 71, 85.

Such a partial approach, if not reconsidered, may cause the FCC to adopt policies that are neither appropriate nor effective in complying with section 706 of the Act.

Section 706 of the Act refers to the need to encourage and accelerate deployment of advanced capability to "all Americans."<sup>2</sup> It does not specify any geographic segment for particular consideration. As discussed below, Americans living in rural areas do not necessarily have advanced service needs that differ from, or that deserve to be considered ahead of, the needs of other Americans. Thus, it is inappropriate under section 706, particularly at this initial stage of inquiry, for the FCC to assign higher priority to the advanced service needs of rural areas than to those of other areas.

Also, as a practical matter, focusing on "rural areas" or other geographic distinctions is not very useful in determining how to achieve greater deployment of advanced telecommunications capability for all Americans. Recent studies show that those who lack access to advanced telecommunications capability share several primary characteristics that do not depend on geographic location. For example, a recent study by the National Telecommunications and Information Administration ("NTIA") concludes that households with low incomes, the poorly educated, minorities, the young (under 25 years), and senior citizens (55 years and older) -- whether in rural areas or in central cities -

---

<sup>2</sup> Sections 706(a) and 706(b) of the Act (emphasis added).

- have the least access to advanced telecommunications services.<sup>8</sup>

The NTIA study shows that, in the northeast region of the United States, the percentage of rural households with online service (19.7%) actually exceeds that of central city households (12.6%).<sup>9</sup> Also, fewer than 10% of both rural and central city households with incomes under \$20,000 have online service, compared to more than 40% of both rural and central city households with incomes of \$75,000 or higher that have online service.<sup>10</sup> Similarly, fewer than 10% of both rural and central city households with no college education have online service, compared to more than 35% of both rural and central city households with a B.A. degree or higher education that have online service.<sup>11</sup> The NTIA Study further found that the percentage of White, non-Hispanic households with online service in rural areas (15.5%) is almost three times that of Black, non-Hispanic households with online service in central cities (5.8%).<sup>12</sup> These findings show that a given household's lack of

---

<sup>8</sup> National Telecommunications and Information Administration, Falling through the Net II: New Data on the Digital Divide <<http://www.ntia.doc.gov/ntiahome/net2/falling.html>> ("NTIA Study") at 3, 4.

<sup>9</sup> NTIA Study, Chart 20.

<sup>10</sup> Id.

<sup>11</sup> NTIA Study, Chart 23.

<sup>12</sup> NTIA Study, Chart 21.

access to advanced services depends on factors other than whether the household is located in a rural area.

A recent study from the Taub Urban Research Center further demonstrates this point.<sup>13</sup> By analyzing data from one of the nation's largest Internet service providers, the Taub Study found that areas with a high concentration of low-income households making less than \$20,000 a year have a lower Internet subscribership as compared to areas with higher income levels.<sup>14</sup> The Taub Study similarly found that areas with a greater concentration of blue collar workers have a lower density of Internet subscribers as compared to areas with a greater concentration of college-educated adults. The Taub Study concluded that the current emerging cost structure for Internet access may exclude certain segments of our society from online services.<sup>15</sup> This conclusion was based on socioeconomic variables such as household income and education that do not depend on the household's geographic location.

Rather than focus on the deployment of advanced telecommunications services based on "rural" or other geographic distinctions, the DCPSC recommends that the FCC focus instead on characteristics that more accurately reflect households that lack access to those services, such as low income, lack of education,

---

<sup>13</sup> Taub Urban Research Center, Net Equity <<http://urban.nyu.edu/research/net-equity/>> ("Taub Study").

<sup>14</sup> Id. at 2.

<sup>15</sup> Id. at 4-5.



age (i.e., under 25 and over 55), and minority status. As the NTIA study concluded, households with these characteristics -- in both rural areas and central cities -- have the least access of all Americans to advanced services, yet they could most use advanced services to find jobs, housing and other services.<sup>16</sup> Moreover, NTIA found that once these populations gain online access, they are among the most enthusiastic of Americans in using their access to take courses and search job ads to empower and better themselves.<sup>17</sup> By focusing on "rural areas," the FCC may effectively foreclose any meaningful inquiry into the advanced service needs of the vast majority of "least connected" Americans.

B. The FCC Should Provide Regulatory Incentives to Encourage Deployment of Advanced Services to Households and Neighborhoods that Lack Access to Those Services.

The NOI asks how the FCC should determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely manner, and how to encourage such deployment using the authority provided under section 706 of the Act.<sup>18</sup> In determining the reasonable and timely deployment of advanced capability, the FCC's standard should be for such capability to be accessible in each American household that

---

<sup>16</sup> NTIA Study at 4.

<sup>17</sup> Larry Irving, Assistant Secretary for Communications & Information, U.S. Dept. of Commerce, and Administrator, National Telecommunications & Information Administration, Universal Internet - Essay 8 <[http://www.ntia.doc.gov/ntiahome/speeches/EMFA\\_t2e.htm](http://www.ntia.doc.gov/ntiahome/speeches/EMFA_t2e.htm)> ("Irving Essay") at 2.

<sup>18</sup> NOI ¶¶ 59, 69.

desires it, regardless of income level, educational background, age, or minority status. In that regard, the FCC should encourage deployment to households that currently have the least access to advanced capability (i.e., low-income, poorly educated, young, senior, and minority). In areas where immediate deployment to all households cannot be achieved, the FCC's immediate focus should be to encourage deployment of advanced capability at the neighborhood level.

By "neighborhood level," the DCPSC refers to schools, libraries, and community centers. Because these facilities are publicly accessible and widely dispersed, they can serve as critical points for linking advanced services with populations which do not have access to those services from their homes. As the Taub Study concluded, "for impoverished households, schools, community centers and libraries may be the primary Internet access channels."<sup>19</sup> The NTIA study similarly concluded that, because it may take time for advanced service "have nots" to become connected at home, "it is still essential that schools, libraries, and other community access centers . . . provide computer access in order to connect significant portions of our population."<sup>20</sup>

To encourage deployment of advanced capability to the least connected populations, the FCC should use its authority under section 706 of the Act to establish competitively-neutral

---

<sup>19</sup> Taub Study at 5.

<sup>20</sup> NTIA Study at 4-5.

regulatory incentives for companies under its jurisdiction.<sup>21</sup> Methods for providing such incentives include APT's proposals for adjustments to price cap productivity factors and for imposing conditions on mergers and acquisitions.<sup>22</sup> The FCC should also consider ways to provide such incentives when issuing or renewing licenses under Title III of the Communications Act of 1934<sup>23</sup> or when considering any plant construction applications that will continue to be required under section 214.<sup>24</sup> In addition, the FCC should consider seeking any legislation that it may need to allocate all or part of the federal excise tax revenues to supplement these regulatory incentives. Without some type of regulatory incentives, carriers may be unwilling to voluntarily deploy advanced services to unprofitable access points, and those

---

<sup>21</sup> Under section 706(a) of the Act, the FCC must encourage deployment of advanced services by using "price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." Section 706(b) of the Act similarly authorizes the FCC, upon a determination that deployment is not occurring in a reasonable and timely fashion, to accelerate deployment "by removing barriers to infrastructure investment and by promoting competition in the telecommunications market."

<sup>22</sup> See Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry & Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act (Feb. 18, 1998) ("APT Petition") at 16-18.

<sup>23</sup> 47 U.S.C. §§ 301 et seq.

<sup>24</sup> See Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Notice of Proposed Rulemaking, CC Docket No. 97-11 (rel. Jan. 13, 1997) (proceeding to revise rules for section 214 applications).

who have the least access to advanced services will likely remain "unconnected" for the foreseeable future.<sup>25</sup>

The District of Columbia Telecommunications Infrastructure Assistance Fund ("the D.C. Infrastructure Fund") is an excellent example of how regulatory incentives can be used to encourage deployment of advanced telecommunications. The D.C. Infrastructure Fund, established in 1996 as part of a settlement among Bell Atlantic - Washington, D.C. ("BA-DC") and other parties to an alternative regulation proceeding, helps finance advanced telecommunications projects in the District's public schools, libraries and community centers.<sup>26</sup> Under the terms of the settlement, BA-DC was required to provide the initial capitalization of the fund, part of which consisted of a voluntary contribution by BA-DC. During the past two years, the D.C. Infrastructure Fund has succeeded in: 1) installing and testing cables, hubs, routers, and T1 upgrades in each of the 147 public schools in the District of Columbia, 2) installing Internet access for nine public libraries in the District of Columbia and for a summer camp sponsored by the District of

---

<sup>25</sup> See National Association of Regulatory Utility Commissioners Internet Working Group, Policies on Pricing and Universal Service for Internet Traffic on the Public Switched Network at vii <<http://nrri.ohio-state.edu/download/9811.pdf> (April 1998) (subsidies for infrastructure investment may be necessary in some areas to provide advanced services or to facilitate Internet access); Irving Essay at 2 (while robust competition will drive down prices and foster technological change, there will also be a continuing role for incentive-based grant programs).

<sup>26</sup> Formal Case No. 814, Phase IV, Order No. 10877 (Nov. 12, 1996).

Columbia Public Schools, 3) establishing local- and wide-area networks among District schools and libraries, and 4) providing lap top computers to each school principal.

While thus far the D.C. Infrastructure Fund has successfully assisted with initial deployment of advanced services to schools and libraries, the original capitalization of the Fund is almost depleted. Meanwhile, there is a growing need to maintain and expand upon the current level of advanced services in schools and libraries, and to move forward with initial installation of advanced services in community centers. Such needs either exist now in all States or likely will exist when other State Commissions undertake efforts to encourage deployment of advanced services. In light of these needs, the FCC could satisfy its obligations under section 706 of the Act by encouraging carriers to voluntarily supplement, and possibly coordinate their efforts with, existing State commission deployment programs.

Some may argue that the existing Schools and Libraries Universal Service Program ("the E-rate Program") already encourages sufficient deployment of advanced services to the neighborhood level. The E-rate Program, however, does not meet all existing needs. First, the E-rate Program does not support deployment of advanced services to community centers. While District of Columbia schools may provide advanced services to school-age children during school hours, schools generally cannot be accessed by the District's adult population, nor by the students themselves in the evenings and on weekends when they may

have the most time to use advanced services. Even in areas with a high density of libraries, libraries alone cannot serve, nor should they be expected to serve, as the only channel for access to advanced services.

Second, the tiered discounts that apply under the E-rate Program leave significant unfunded expenses for schools and libraries in the lower discount tiers. While it may be reasonable to expect schools and libraries to share in the cost of deploying advanced services to them, the unfunded amounts under the tiered discounts represent a significant new expense to schools and libraries. These institutions already lack adequate funds to provide core services. In fact, when the FCC adopted the tiered discounts it expressly recognized that even the lowest copayment of 10 percent "might create an impossible hurdle for disadvantaged schools and libraries that are unable to allocate any of their own funds toward the purchase of eligible discounted services, and, thus, could increase the resource disparity among schools."<sup>27</sup> By establishing regulatory incentives such as those discussed above, the FCC could encourage deployment of advanced services that otherwise would not occur for lack of funding.

Third, the E-rate Program does not address all aspects of an effective advanced service deployment effort. The E-rate Program, for example, does not support installation of computers

---

<sup>27</sup> Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45 (rel. May 8, 1997) ("Universal Service Order") ¶ 497.

and modems.<sup>28</sup> Nor does it support staffing of community access points for advanced services, training of individuals on how to use advanced services, or campaigns to increase awareness about the benefits of advanced services among those, including the poorly-educated, who currently lack access to them. The FCC could use regulatory incentives to encourage companies not only to install equipment, but also to participate in community outreach programs, provide informational bill inserts, and other efforts to disseminate information about advanced services that are available. In addition to any regulatory incentive established by the FCC, such efforts would also qualify as tax deductible contributions by the carriers. In addition, training and awareness campaigns would likely create greater demand for advanced services in areas where deployment is currently not considered profitable, and could actually result in a reduced need for government-sponsored deployment incentives.

C. The FCC Should Reject the Alliance for Public Technology's Suggestion to Require Restructuring of Local Rates for Residential and Business Services.

The FCC requests comment on APT's suggestion that the FCC require restructuring of local residential and business rates.<sup>29</sup> APT alleges that such restructuring would remove barriers to deployment of advanced telecommunications capability. According to APT, current rates may send the wrong economic signals because price regulation allegedly sets residential rates below business

---

<sup>28</sup> See Universal Service Order ¶ 460.

<sup>29</sup> NOI ¶ 72.

rates.<sup>30</sup> APT's conclusion appears to be premised on its belief that residential rates do not cover costs, and that deployment of advanced telecommunications services to residential customers therefore would not be profitable.<sup>31</sup>

The DCPSC disagrees with APT's arguments and conclusions on this issue for several reasons. First, the instant proceeding is not an appropriate forum in which to address pricing of intrastate services. As the FCC is aware, intrastate pricing issues are statutorily reserved for State commissions under section 2(b) of the Communications Act of 1934. Thus, even if the FCC concluded that undesirable differences in rates for intrastate residential and business services existed, the FCC would not be authorized to require restructuring of those rates.<sup>32</sup>

Second, APT incorrectly implies that State commissions uniformly set residential rates below cost in order to achieve residential rates that are lower than business rates. In the

---

<sup>30</sup> APT Petition at 25-26.

<sup>31</sup> Id.

<sup>32</sup> Section 2(b) provides that, except as provided in certain sections, "nothing in [the Communications Act of 1934] shall be construed to apply or to give the Commission jurisdiction with respect to . . . charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service. . . ." 47 U.S.C. § 152(b). The section 2(b) prohibition is a "specific denial of agency authority to act" and because of section 2(b) the FCC "cannot act at all, let alone preempt state action, in connection with intrastate communication." People of State of Calif. v. F.C.C., 4 F.3d 1505, 1514 (9th Cir. 1993) (citing Louisiana Pub. Serv. Comm'n v. F.C.C., 476 U.S. 355, 370 (1986)).



District of Columbia, rates for both residential and business services are set above costs, except where subsidy is required for programs designed to promote universal service. Because residential and business services have different cost structures, artificial realignment of residential rates with business rates could result in inappropriate rates that do not reflect costs.

APT also fails to establish a correlation between realignment of (i.e., increases in) existing rates for low-grade POTS<sup>33</sup> services and increased deployment of high-capacity advanced services. Any such correlation seems unlikely because market forces (i.e., competition) will generally determine the price of advanced services, regardless of what rates regulatory commissions adopt for residential POTS service. Also, higher residential rates would likely result in lower POTS penetration among those who currently lack access to advanced services.

Any imbalance in the deployment of advanced services to residential and business customers is not likely caused by disparate pricing of local residential and business services. Rather, any such imbalance likely results from other factors such as differences in demand for those services among business and residential customers and cost savings from economies of scale and scope in providing those services to customers in central business districts.

---

<sup>33</sup> "POTS" refers to plain old telephone service.


For the foregoing reasons, the DCPSC opposes APT's suggestion that the FCC should take action to align intrastate residential rates with intrastate business rates.

CONCLUSION

The DCPSC recommends that the FCC implement the requirements of section 706 of the Act in accordance with the comments and recommendations set forth herein.

Respectfully submitted,

PUBLIC SERVICE COMMISSION OF  
THE DISTRICT OF COLUMBIA

  
Richard A. Beverly  
General Counsel

Public Service Commission of  
the District of Columbia  
717 Fourteenth Street, N.W.  
Washington, D.C. 20005  
(202) 626-5100

Of Counsel:

Thomas R. Gibbon  
Anthony M. Black  
Frankie Foster-Davis

BELL, BOYD & LLOYD  
1615 L Street, N.W.  
Suite 1200  
Washington, D.C. 20036  
(202) 466-6300

September 14, 1998